

APR 13 2006

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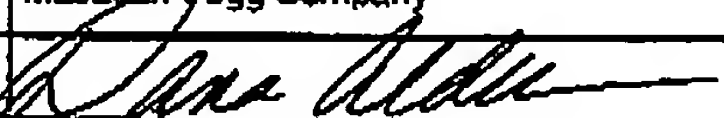
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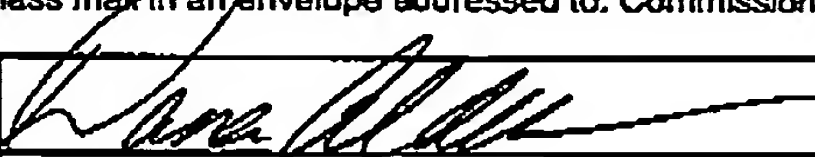
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/658,143
	Filing Date	September 9, 2003
	First Named Inventor	Paul Lew
	Art Unit	3681
	Examiner Name	David D. Le
	Attorney Docket Number	36-0540-6520-0000-5
Total Number of Pages in This Submission		5

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Firm Name	MacLean-Fogg Company		
Signature			
Printed name	Dana Andrew Alden		
Date	April 13, 2006	Reg. No.	48,475

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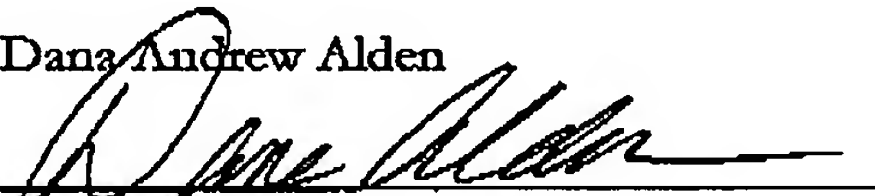
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Paul Lew and Jason Schiers
Serial No.: 10/658,143
Filed: September 9, 2003
For: WHEEL HUB WITH CLUTCH
Examiner: David D. Le
Group Art Unit: 3681

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APPELLANTS' REPLY BRIEF

Mail Stop Appeal Brief-Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. Reply to Examiner's comments on rejection under 35 U.S.C. § 102(b).

The Examiner strains the timepiece of Vogt in order to find a "hub body including a first sleeve and a second sleeve" as recited in claim 19. The Examiner's argument regarding the teaching of Vogt is plainly unreasonable. According to the Examiner, "Vogt discloses a wheel" that includes "a combination of elements 1, 5, 7 and 8." See Examiner's Answer, p. 10. At the same time, the Examiner states that the hub body is the combination of "elements 1, 7, and the interior portion of 8." See Examiner's Answer, p. 8. In addition, in the final office action dated January 25, 2005, the Examiner asserts that in Vogt elements 1 and 8 of Vogt constitute a first sleeve and a second sleeve. See Final Office Action dated January 25, 2005, p. 5, ¶ 12. Thus, according to the Examiner, elements 1 and 8 constitute a first sleeve and a second sleeve, and, combine with 7 to constitute a hub body, and, further combine with element 5 to constitute a wheel. Thus, the Examiner's reading of Vogt renders a wheel, a hub, a first sleeve, and a second sleeve as essentially the same thing. Clearly, a wheel, a hub, and a sleeve cannot all be synonymous.

Putting to one side the examiner's strained reading of Vogt, Vogt simply does not support the Examiner's argument. In Vogt, elements 1 and 7 are separate disks; element 8 is a rim, and element 5 is a roller. Vogt, Col. 1, ll. 50-62.

II. Reply to Examiner's comments on rejections under 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 132.

According to the Examiner, claim 19 is properly rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement and Applicant's Substitute Specification filed on August 23, 2005 was properly denied entry because it introduces new matter. However, as Applicants have previously pointed out, M.P.E.P. § 2163.07(a) clearly states that "[b]y disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a

patent application necessarily discloses that function, theory or advantage, even though it says nothing explicit concerning it.” Therefore, inherent features are necessarily a part of the written description at the time of filing, and, accordingly, there is nothing improper with amending the application to recite or claim an inherent function, theory, property, or advantage. In the present situation, it is clear that the originally disclosed ball bearings are inherently curved members. In fact, the Examiner has explicitly stated that “curved members ... define the originally recited ball bearings.” See Examiner’s Answer, p. 10, ¶ 1. Nevertheless, the Examiner contends that these rejections are proper because:

“Curved members not only define the originally recited ball bearings but also encompass other types of members or bearings such as cylindrical bearings, tapered bearings, sleeve bearings, and roller bearings.”; and

“claim 19 ... contains the limitation, “a plurality of curved members”, which is not originally disclosed or described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, has possession of the claimed invention, which includes other types of bearings, such as the tapered bearing(s), the cylindrical bearing(s), the sleeve bearing(s), and the roller bearing(s), other than the originally disclosed “ball bearing(s)”.”

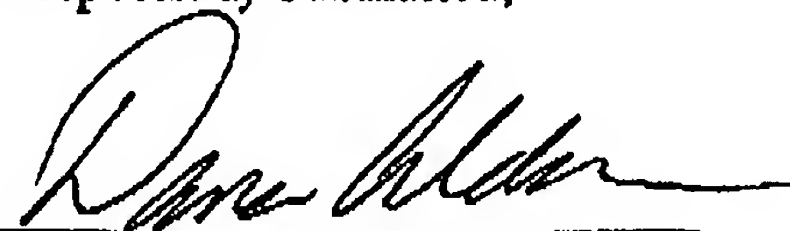
In response, Applicants respectfully submit that the Examiner has confused the concept of breadth with the prohibition against introducing new matter or claiming subject matter in violation of the written description requirement. Furthermore, Applicants point out that the standard set forth in the M.P.E.P. with respect to inherency clearly contradicts the Examiner’s position in this regard. Accordingly, for at least this reason, Applicants submit that the Examiner has erred and respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph rejection of claim 19 and entry of the substitute specification filed on August 23, 2005.

Additionally, the Examiner’s understanding is in plain contradiction to previous and good standing case law. In particular, in the case of In re Smythe, the court rejected the

P1'O's argument that a claim reciting "inert fluid" was properly rejected because the original disclosure did not adequately describe all inert fluids because it only named inert gases. 480 F.2d 1376 (CCPA 1973). Accordingly, for at least this reason, Applicants submit that the Examiner has erred and respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph rejection of claim 19 and entry of the substitute specification filed on August 23 2005.

Dated: April 13, 2006

Respectfully Submitted,



Dana Andrew Alden
(Reg. No. 46,475)